

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA

FILED

AUG 21 2001

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA,

Plaintiff,

v.

STEVEN ALBERT HELLING,

Defendant.

Criminal No. 01-32

JURY INSTRUCTIONS

MEMBERS OF THE JURY, THE COURT NOW GIVES YOU THE
FOLLOWING INSTRUCTIONS:

INSTRUCTION NO. 1

The instructions I gave you at the beginning of the trial and during the trial remain in effect. I now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I previously gave you are not repeated here.

These written instructions that I am now giving you will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed.

INSTRUCTION NO. 2

You must make your decision based on what you recall of the evidence. You will not have a written transcript to consult, and the court reporter cannot read back lengthy testimony.

Any notes you have taken should be used only as memory aids. You should not give your notes precedence over your independent recollection of the evidence. If you did not take notes, you should rely on your own independent recollection of the proceedings and you should not be influenced by the notes of other jurors. I emphasize that notes are not entitled to any greater weight than the recollection or impression of each juror as to what the testimony might have been.

INSTRUCTION NO. 3

It is your duty to find from the evidence what the facts are. You will then apply the law, as I give it to you, to those facts. You must follow my instructions on the law, even if you thought the law was different or should be different.

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense, and the law as I give it to you.

INSTRUCTION NO. 4

I have mentioned the word "evidence." The "evidence" in this case consists of the testimony of witnesses, the documents and other things received as exhibits, the facts that have been stipulated--this is, formally agreed to by the parties, the facts that have been judicially noticed--this is, facts which I say you may, but are not required to, accept as true, even without evidence.

You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence in the case.

Certain things are not evidence. I shall list those things again for you now:

1. Statements, arguments, questions, and comments by lawyers representing the parties in the case are not evidence.

2. Objections are not evidence. Lawyers have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustained an objection to a question, you must ignore the question and must not try to guess what the answer might have been.

3. Testimony that I struck from the record, or told you to disregard, is not evidence and must not be considered.

4. Anything you saw or heard about this case outside the courtroom is not evidence.

Finally, if you were instructed that some evidence was received for a limited purpose only, you must follow that instruction.

INSTRUCTION NO. 5

There are two types of evidence from which a jury may properly find a defendant guilty of an offense. One is direct evidence--such as the testimony of an eyewitness. The other is circumstantial evidence--the proof of a chain of circumstances pointing to the commission of the offense.

As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that, before convicting a defendant, the jury be satisfied of a defendant's guilt beyond a reasonable doubt from all of the evidence in the case.

INSTRUCTION NO. 6

In deciding what the facts are, you will have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, consider the intelligence of the witness, the opportunity the witness had to have seen or heard the things testified about, the memory of the witness and motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider therefore whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

You should judge the testimony of the defendant in the same manner as you judge the testimony of any other witness.

INSTRUCTION NO. 7

A witness may be discredited or impeached by contradictory evidence; or by evidence that at other times the witness has made statements which are inconsistent with the witness's present testimony.

If you believe any witness has been impeached and thus discredited, you may give the testimony of that witness such credibility, if any, as you think it deserves.

If a witness is shown knowingly to have testified falsely concerning any material matter, you have a right to distrust such witness's testimony in other particulars; and you may reject all the testimony of that witness or give it such credibility as you may think it deserves.

INSTRUCTION NO. 7a

You have heard testimony about the character and reputation of the defendant, Steven Albert Helling, for truthfulness. You may consider this evidence only in deciding whether to believe the testimony of the defendant and how much weight to give it.

INSTRUCTION NO. 8

You have heard evidence that certain witnesses have made plea agreements with the government or have received a promise from the government that they would not be prosecuted or have received a promise from the government that their testimony will not be used against them in a criminal case. The testimony was received in evidence and may be considered by you.

You may give the testimony such weight as you think it deserves. Whether or not their testimony may have been influenced by the government's promise is for you to determine.

INSTRUCTION NO. 9

You have heard evidence that certain witnesses hope to receive a reduced sentence on criminal charges pending against them in return for their cooperation with the government in this case. These witnesses entered into a "plea agreement" with the government which provides that in return for assistance, the government may file a motion for reduction in sentence. If the prosecutor handling this witness's case believes they provided substantial assistance, that prosecutor may file in the court in which the charges are pending against this witness a motion to reduce their sentence. The judge has no power to reduce a sentence for substantial assistance unless the government, acting through the United States Attorney, files such a motion. If such a motion for reduction of sentence for substantial assistance is filed by the government, then it is up to the judge to decide whether to reduce the sentence at all, and if so, how much to reduce it.

You may give the testimony of this witness such weight as you think it deserves. Whether or not testimony of a witness may have been influenced by the hope of receiving a reduced sentence is for you to decide.

INSTRUCTION NO. 10

You will remember that certain summaries were admitted in evidence. You may use those summaries as evidence, even though the underlying documents and records are not here. It is for you to decide how much weight, if any, you will give to them. In making that decision, you should consider all of the testimony you heard about the way in which they were prepared.

INSTRUCTION NO. 11

The indictment in this case charges the defendant with two different crimes.

Under Count One, the indictment charges the defendant, Steven Albert Helling, committed the crime of conspiracy to knowingly and intentionally distribute controlled substances, in violation of Title 21, United States Code, Sections 841(a)(1) and 846.

Under Count Three, the indictment charges the defendant, Steven Albert Helling, with the crime of knowingly and intentionally distributing controlled substances by knowingly accepting altered, forged, and invalid prescription forms, in violation of Title 21, United States Code, Sections 841(a)(1), (b)(1)(C), and Title 18, United States Code, Section 2.

The defendant has pleaded not guilty to each of those charges.

As I told you at the beginning of the trial, an indictment is simply an accusation. It is not evidence of anything. To the contrary, the defendant is presumed to be innocent. Thus the defendant, even though charged, begins the trial with no evidence against him. The presumption of innocence alone is sufficient to find the defendant not guilty and can be overcome only if the government proves, beyond a reasonable doubt, each essential element of the crime charged.

INSTRUCTION NO. 12

A reasonable doubt is a doubt based upon reason and common sense, and not the mere possibility of innocence. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

INSTRUCTION NO. 13

The crime of conspiracy to distribute controlled substances, as charged in Count 1 of the indictment, has three essential elements, which are:

One, from on or about December 1997 until February 2000, two or more persons reached an agreement or came to an understanding to unlawfully distribute controlled substances;

Two, the defendant voluntarily and intentionally joined in the agreement or understanding, either at the time it was first reached or at some later time while it was still in effect; and

Three, at the time the defendant joined in the agreement or understanding, he knew the purpose of the agreement or understanding was unlawful.

For you to find the defendant guilty of this crime, the government must prove all of these essential elements beyond a reasonable doubt. Otherwise, you must find the defendant not guilty.

INSTRUCTION NO. 14

With regard to the first element of the crime of conspiracy, the government must prove that the defendant reached an agreement or understanding with at least one other person. It makes no difference whether that person is a defendant or named in the indictment.

The "agreement or understanding" need not be an express or formal agreement or be in writing or cover all the details of how it is to be carried out. Nor is it necessary that the members have directly stated between themselves the details or purpose of the scheme.

You should understand that merely being present at the scene of an event, or merely acting in the same way as others or merely associating with others, does not prove that a person has joined in an agreement or understanding. A person who has no knowledge of a conspiracy but who happens to act in a way which advances the purpose of one, does not thereby become a member.

But a person may join in an agreement or understanding, as required by this element, without knowing all the details of the agreement or understanding, and without knowing who all the other members are. Further it is not necessary that a person agree to play any particular part in carrying out the agreement or understanding. A person may become a member of a conspiracy even if that person agrees to play only a minor part in the conspiracy, as long as that person has an understanding of the unlawful nature of the plan and voluntarily and intentionally joins in it.

You must decide, after considering all of the evidence, whether the conspiracy alleged in Count 1 of the indictment existed. If you find that the alleged conspiracy did exist, you must

also decide whether the defendant voluntarily and intentionally joined the conspiracy, either at the time it was first formed or at some later time while it was still in effect. In making that decision, you must consider only evidence of the defendant's own actions and statements. You may not consider actions and pretrial statements of others, except to the extent that pretrial statements of others describe something that had been said or done by the defendant.

INSTRUCTION NO. 15

The crime of distributing controlled substances as charged in Count 3 of the indictment, has three essential elements, which are:

One, the defendant intentionally transferred controlled substances to another person;

Two, at the time of the transfer, the defendant knew that it was a controlled substance;
and

Three, at the time of the transfer, the defendant knew the controlled substances would not be used for a legitimate medical purpose.

For you to find the defendant guilty of this crime, the government must prove all of these essential elements beyond a reasonable doubt. Otherwise, you must find the defendant not guilty.

INSTRUCTION NO. 16

An act is done knowingly if the defendant is aware of the act and does not act through ignorance, mistake, or accident.

You may find that the defendant Steven Albert Helling acted knowingly if you find beyond a reasonable doubt that he was aware of a high probability that the prescriptions were not being used for a legitimate medical purpose and that he deliberately avoided learning the truth. The element of knowledge may be inferred if defendant deliberately closed his eyes to what would otherwise have been obvious to him.

You may not find that the defendant Steven Albert Helling acted knowingly, however, if you find that he actually believed that the prescriptions were being used for a legitimate medical purpose. A showing of negligence, mistake, or accident is not sufficient to support a finding of knowledge.

INSTRUCTION NO. 17

Intent or knowledge may be proved like anything else. You may consider statements made and acts done by the defendant, and all facts and circumstances in evidence which may aid in the determination of defendant's knowledge or intent.

You may, but are not required to, infer that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted.

INSTRUCTION NO. 18

The government is not required to prove that the amount of controlled substances obtained or distributed as part of the conspiracy was any specific amount. It only needs to prove beyond a reasonable doubt that there was a measurable amount of controlled substances.

INSTRUCTION NO. 19

In conducting your deliberations and returning your verdict, there are certain rules you must follow. I shall list those rules for you.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement if you can, because the verdict--whether guilty or not guilty--must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or simply to reach verdict.

Third, if the defendant is found guilty, the sentence to be imposed is my responsibility. You may not consider punishment in any way in deciding whether the government has proved its case beyond a reasonable doubt.

Fourth, if you need to communicate with me during your deliberations, you may send a note to me through the court security officer, signed by your foreperson. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone--including me--how your vote stands numerically. Before communicating with me about these instructions, please examine them very carefully; I believe these instructions are

complete and sufficient.

Fifth, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. Nothing I have said or done is intended to suggest what your verdict should be--that is entirely for you to decide.

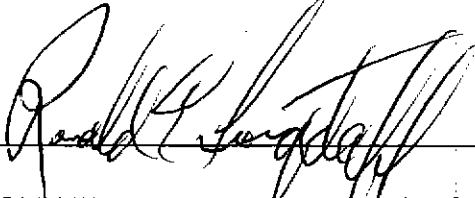
Sixth, remember that you are not partisans; you are judges - judges of the facts. Your sole duty is to find the truth and do justice. You are the exclusive judges of the credibility of the witnesses and the weight of the evidence.

INSTRUCTION NO. 20

Submitted to you with these instructions is a verdict form. When you reach your verdicts, have your foreperson sign the verdict form.

All twelve jurors must agree to the verdicts reached.

When you have reached your verdicts, notify the court security officer.



RONALD E. LONGSTAFF, Chief Judge
U.S. District Court